IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/07/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.6465 OF 1998

1. S. Arumugam
2. K. Dharmalingam
3. P. Jayaraman
4. R. Matheeswaran
5. P. Alagarasan .. Petitioners

-Vs-

1. The Presiding Officer,
Labour Court,
Salem.

2. The Management of Institute
of Road and Transport Technology,
Erode. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.D. Hari Paranthaman

For Respondent-2 : Mr. John for
M/s. Ramasubramanian &
Associates

:J U D G M E N T

The present writ petition has been filed challenging the order passed by the Presiding Officer, Labour Court and for a direction to the respondent No.2 to reinstate the petitioners with continuity of service, backwages and other attendant benefits.

2. The respondent No.2 is an Engineering College established by the Transport Corporations owned by the State Government. According to the petitioners, they along with several others had been engaged as security guards. Initially they were being paid directly. They had demanded for regularisation and at this stage they were prevented from joining the duty alleging that the workmen had been orally terminated without any notice or any

compensation. Industrial Disputes were raised by individual workmen.

3. Before the Labour Court, counter had been filed on behalf of the respondent No.2 refuting the contentions raised. It was stated that the applicant was never employed directly in the Institute and he was workman engaged through a security contractor. In the alternative it was submitted that even if the applicant was considered to be a workman, his employment was irregular as he had not been employed by following the mandatory procedure applicable to the Institution.

4. Before the Labour Court, all similar cases filed by various workmen were heard together. On behalf of the workmen, one witness was examined, whereas on behalf of the Management, two witnesses, namely, the two successive Principals of the College were examined. Several documents have also been produced from either side. The Labour Court came to the conclusion that all the claimants had worked on labour contract basis by entering into contract with the management and after every month, they have received the money through the contractor. It was further found that

> . . . no contractor was continuously entered into contract with the management. Petitioner in I.D.172/94 was involved in work only in May 93 as per contract. Petitioner in I.D.70/95 has worked only in December 92 as contractor. Petitioner in I.D.71/95 has worked as contractor only for four months, i.e. August 92, April 93, August 93, February 93. Petitioner in I.D.72/95 has worked as contractor only for one month, August 93. Petitioner in I.D.73/95 has worked for one month, August 92 as contractor. Petitioner in I.D.74/95 has worked for 4 months i.e. in August 90, November 90, January 91, October 91 as Contractor. Petitioner in I.D.75/95 has worked for 4 months i.e. in September 91, March 92, April 93 and March 94 as contractor. Petitioner in I.D.34/96 has worked for 3 months i.e. in June 91, July 91 and December 91.

5. Relying upon a decision of the Supreme Court reported in 1995(II) LLN 59 (GUJARAT ELECTRICITY BOARD THERMAL POWER STATION, GUJARAT v. HIND MAJDUR SABHA & OTHERS) it was observed by the Labour Court that the workmen ought to have raised industrial dispute under Section 2(k) of the Industrial Disputes Act and the Industrial Dispute raised by the individual petitioners cannot be accepted. Refuting the contention that even workman himself can enter into a contract of employment through him, it was observed that such question could not be decided as the dispute was at the instance of the individual persons and there was no reference by the State. On the basis of such conclusion, while dismissing the industrial disputes, a direction was given in each industrial dispute to pay a sum of Rs.5,000/- as solatium to the claimant.

6. The claims before the Labour Court were relating to nonengagement of the applicants. There was no prayer for regularisation of service. The observation of the Labour Court at various places to the effect that there was no reference by State and no dispute within the meaning of Section 2(k) of the Act is obviously based on misconception of facts placed by various applicants. Their grievance was regarding the alleged non-engagement in violation of the provisions contained in Section 2A of the Act. Such

individual disputes could be raised in view of the provisions contained in Section 10A, as amended in Tamil Nadu.

7. A careful perusal of the award of the Labour Court along with the materials on record makes it clear that the so called contracts between the management and the person agreeing to supply the labour had followed a peculiar pattern. The contracts were made in each month with one or two persons agreeing to employ such person and calling upon such person to engage few others. In the subsequent months, similar contracts in cyclostyled form were executed between the management and some other person. A perusal of the materials available clearly shows that a person who was being engaged through so called contractor for a few months would suddenly be the "contractor" for the subsequent month, where he would be engaged as security guard in his so called capacity as "contractor" and would agree to engage few others as security guards. It is obvious that the very same persons were being engaged as security guards and documents were being executed to give a colour as if the persons were being engaged through a contractor. In a normal contract for employment of labour, one would have expected that the same contractor would continue for a considerable length of time, but the very fact that one or two persons were being contracted to supply labour including themselves as labourers and similar arrangements would be made with other persons, tells its own tale. Coupled with the above, the documents on record as well as the evidence of the two management witnesses clearly indicates that the directions were being given through a Supervisor regarding the duty of such persons and even on some occasions, those persons were being discontinued for a few days on the basis of the direction of the authorities. These aspects clearly indicate that some amount of control was being exercised by the management.

8. It is the specific case of the applicants that such practice was suddenly introduced in 1991-92. The materials on record clearly support such a stand. No contra materials have been produced on behalf of the management to indicate the position that was obtaining prior to the introduction of such system. It is of course true that when the claimants have come to the court with the allegation that they have worked and they have been disengaged, burden was on them to produce materials in support of their contention. However, the basic principle that the parties must produce the best evidence and the duty on the respondents to bring all relevant materials on record, cannot be lost sight of.

9. Learned counsel appearing for the respondents has vehemently contended that there is no specific allegation that the contracts were sham transactions and there was actual relationship of employer and employee between the respondent No.2 and the claimants. In the claim petitions, it has been indicated that the claimants had been working directly under the respondent No.2 and they had been suddenly disengaged. It is of course true that nothing had been indicated about the contract. However, it has to be remembered that the applications had not been drafted by lawyers having legal knowledge, but may be by the workman himself or some person in

the Union. The pleadings filed by such persons must be construed on par with "mofussil pleadings" and it would not be proper to interpret such pleadings strictly. The basic allegation that the claimants were directly employed under the respondent No.2 was there in the pleading. Even though it had not been specifically stated in so many words that the contract was sham, it is quite evident that the clear case of the claimants was to the effect that they were workmen under the respondent No.2.

10. Learned counsel appearing for the respondent No.2 has vehemently contended that since the question had not been thrashed out by the Labour Court, if there is any illegality in such order, the matter should be remanded for fresh disposal. Even though normally such a course is to be adopted, I find that disputes have started about a decade back and it would not be in the interest of justice to remand the matter at this stage which would be prolonging the agonising litigation for the claimants and an uncertain litigation for the management. With a view to bring the fruitless litigation to an end, it would be in the interest of justice to finalise the matter.

11. The peculiar nature of various contracts has already been noticed. The oral evidence indicates that some amount of control was being exercised over the security supervisor engaged by the management and sometimes the persons were asked to remain absent. The materials on record clearly indicate that the persons had been initially directly engaged by the management, but subsequently so called contracts were executed to show as if the persons were being engaged through some contractors. The inevitable conclusion is that the petitioners were workmen under the college and the so called "contract" was a mere eye-wash.

12. There is no doubt that no notice had been issued nor any retrenchment compensation had been given. Since the petitioners have been found to have been directly engaged and subsequent disengagement was without following the provisions contained in Section 25F of the Industrial Disputes Act, they would come within the meaning of retrenchment. Therefore, they should be reinstated in service. However, keeping in view the fact that the respondent No.2 is being managed by a Society and running certain educational institutions, it would not be fair to direct payment of backwages. As a matter of fact, the learned counsel appearing for the petitioners had fairly submitted that the petitioners are more concerned about their employment in future rather than their backwages for the past. Moreover, it is already noticed that the Labour Court had given a direction for payment of Rs.5,000/- as ex-gratia to every applicant. Since that order has not been challenged by the respondent, such amount should be paid to the applicants, but apart from such payment, no other payment would be made for the previous period. The petitioners should be permitted to rejoin within a period of 30 days from the date of communication of this order.

13. Subject to the above directions, the writ petition is allowed. No costs.

Index : Yes

Internet : Yes
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To

1. The Presiding Officer,